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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 74

PHILIP JEROME STILES,

Petitioner,

vs.

UNITED STATES,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF FOR PETITIONER

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Travel of the Case

Appellant was indicted by the United States Grand Jury within and for the District of Rhode Island, under Indictment No. 7295 charging appellant with wilfully and knowingly failing, neglecting and refusing to perform a duty required of him under and in execution of the rules, regulations and directions of the Universal Military Training Act, being a person over the age of eighteen (18) years and under the age of twenty-six (26) years, and failing, neglecting and refusing to comply with an order of the Local Selective Service System Board to submit to induction, etc., in violation of 50 U.S.C. App., Section 462. On

October 7, 1966 appellant was arraigned before Mr. Chief Justice Day of the United States District Court for the District of Rhode Island and entered a plea of not guilty as charged. On January 12, 1967, appellant filed an additional plea to the indictment. Said plea being a plea of not guilty as charged by reason of insanity. On January 17, 1967, the matter proceeded to trial before Mr. Chief Justice Day of the United States District Court for the District of Rhode Island, and a jury. On January 23, 1967, upon the conclusion of the evidence in said case, the jury returned a verdict of guilty. After filing appropriate motions, and upon denial of the same by Mr. Chief Justice Day, the appellant was sentenced to a term of two (2) years at a place of detention to be determined by the Attorney General of the United States, on March 17, 1967. On said date, March 17, 1967, appellant filed notice of intention to prosecute appeal. On March 22, 1967 appellant's motion for leave to file appeal in forma pauperis with supporting affidavits of appellant were filed, the same being granted by Mr. Chief Justice Day of the United States District Court for the District of Rhode Island. Subsequent to filing notice of intention to prosecute appeal, the matter is now presented to this Honorable Court on appeal for determination. On September 12, 1967 the matter was argued before the United States Circuit Court of Appeals for the First Circuit, Boston, Massachusetts. On September 20, 1967 judgment was entered by said Court, affirming the judgment of the District Court, with no written opinion. Petition for Writ of Certiorari was filed with the United States Supreme Court on October 9, 1967, and was granted by this Honorable Court on May 6, 1968.

Statement of Facts

The appellant in the instant case is a citizen of the United States, and a citizen of the State of Rhode Island. Selective Service officials, under oath testified that appellant filled out Selective Service questionnaire on April 18, 1963. Appellant was classified 1-A on June 6, 1963 and notice was sent to him of this classification on June 13, 1963. Appellant was re-classified 1-A on March 11, 1964, and notice was sent to appellant on March 12, 1964. Appellant was classified 2-S on October 29, 1964 and notice was sent on November 6, 1964. Appellant was classified 1-A on November 9, 1965 and notice was sent to appellant on November 17, 1965. On November 29, 1965 current information questionnaire, so-called, and an order for physical examination was directed to appellant. Appellant failed to report for said examination. On December 21, 1965, another current information questionnaire was directed to appellant, and in addition thereto, there was an order directed to appellant to report for a physical examination on January 6, 1966. On January 11, 1966, notice was sent to appellant that he failed to report for the physical examination. On January 14, 1966 a pre-induction physical examination order was directed to appellant. The examination was scheduled for January 20, 1966. On January 24, 1966 Selective Service form 252, an order to report for induction on February 9, 1966 was sent to appellant. The appellant failed to appear for induction on the date contained in said order. On February 16, 1966 notice was sent to Headquarters, Selective Service, that appellant did in fact fail to report for induction. The record would indicate that all communications designated to this point in

this statement of facts were in fact sent to appellant at 10 Fortin Road, North Kingstown, Rhode Island (T.P. 47). The transcript will also reveal at page 21 that the induction notice sent to appellant on January 24, 1966 was in fact sent by registered mail, with request of return receipt, and further that the said order was in fact received and signed for by appellant's mother, Grace Ellen Stiles (T.P. 48). The transcript will also reveal, that on May 17, 1963 appellant mailed to his Local Selective Service Board correspondence indicating change of address for the summer to 10 Gorgas Lane, Oakridge, Tennessee, and containing a request for a new Selective Service card (T.P. 64). In addition, and most significant, the transcript will reveal that on January 17, 1966, the appellant directed communication to the Local Selective Service Board indicating that he was in fact leaving for a vacation trip of a month or so, and that he would in fact send postal cards (T.P. 75). The transcript will also reveal that on February 11, 1966 appellant communicated with his Local Draft Board from Knoxville, Tennessee, indicating that he would furnish an address as soon as one was obtained (T.P. 77). The transcript will also reveal that on February 15, 1966, appellant communicated with his Local Draft Board and indicated an address of Lista DeCorreos, Vera Cruz, Vera, Mexico, and requested a new draft card (T.P. 79). Appellant was scheduled for induction into the military forces of the United States on March 9, 1966. The transcript also indicates that appellant received the induction notice calling for induction into the military forces of the United States on March 9, 1966, upon his return on March 15, 1966 (T.P. 312).

Questions Presented

1. Can appellant be convicted of violation of an order to report for induction, without a clear showing of culpable intent or an intent to evade the law?

2. Can appellant be convicted of failing to obey an order to report for induction, said notice having been received by a person other than appellant, which was not delivered to appellant until a time after he was required to in fact report for induction?

3. Can appellant be convicted of failing to report for induction, said notice to report for induction being sent to appellant by the Draft Board after the appellant had in fact advised the Draft Board that he would not be at the address of appellant known to the Draft Board, but that appellant would in fact advise the Draft Board of his address?

4. Must not the Draft Board make use of all data available to it with reference to address of appellant, prior to issuing order to report for induction?

5. Is not a representation to the Trial Court on the record by prosecuting attorneys that no prosecution is recommended, in effect a motion to dismiss the indictment, which in fact must be considered by the Trial Justice?

6. Is not the authority of the person issuing an induction notice open to question at the trial level, and does limitation of cross-examination in this specific area, by the Trial Justice amount to reversible error?

7. Is not the matter of suitability for service in the Armed Forces of the United States, open to question at the trial level, and does limitation in cross-examination in this specific area amount to reversible error?

8. Can the burden of proving sanity of appellant beyond a reasonable doubt, the defense of insanity having been raised and placing insanity in issue, be sustained when the only rebuttal witness offered by prosecution indicates the existence in appellant of emotional disturbance?

ARGUMENT

There is no question that appellant failed to report for induction into the armed forces of the United States. The Local Board located at Westerly, Rhode Island, did in fact order your petitioner to report for induction. The communication sent to the petitioner was in the normal form sent to all other prospective inductees into the military forces of the United States, from this area. Your petitioner does not challenge the right of the Selective Service System to in fact order persons subject to the provisions of the Universal Military Training and Service Act to report for service in the Armed Forces. It is a foregone conclusion that this authority exists, and this authority is in no way being questioned by petitioner. Additionally, it is well settled in the statutory and case law of the United States that an induction notice may not in fact be collaterally attacked or reviewed by any person in the Courts. Your petitioner is not contesting the classification that he in fact received by the Draft Board strictly charged with processing his induction notice. Quite to the contrary, no reference is made to the classification of the petitioner in the instant

case. The normal Selective Service rules and regulations apply, and your petitioner concedes the right of the Selective Service System to classify him in the category in which it did in fact classify him. Your petitioner does, however, submit that pursuant to the statutory law of the United States, more specifically 50 U.S.C. App., §454, "No person shall be inducted into the Armed Forces for training and service or shall be inducted for training in national security training corps under this Title (Section 451-454) (455-471) of this appendix until his acceptability in all respects, including his physical and mental fitness has been satisfactorily determined under the standards prescribed by the Secretary of Defense. . . .". In addition, your petitioner respectfully submits to this Court that a right of attack does exist along these lines. In addition, your petitioner respectfully submits and urges upon this Court that the authority of the persons signing the induction notice to so sign, may in fact be challenged, and that a challenge in this area is completely proper. *United States* v. *Lawson*, 337 F.2d 800. Your petitioner further submits to this Honorable Court that the Trial Justice committed reversible error in severely limiting counsel for defendant to cross-examine witness Thelma Chase Taylor. The trial transcript, beginning at page 55 and continuing to page 61 indicates the attempt on the part of counsel for petitioner to explore this area, with no success. The trial transcript at page 57 indicates,

"Q. Suppose I ask you again. Whom were you appointed by?

A. That is what I thought you asked me, and I am not sure.

Q. You are not sure?

A. Well, I am not sure whether it was Colonel Wilson, the President of the United States, or General Hershey.

Q. Were you appointed for a term?

A. No, I would not say for a term.

Q. Your answer would be No?

A. No.

Q. Did you receive any certificate of appointment or anything?

Mr. Gearon: Your Honor, I don't see the relevancy.

The Court: What is the materiality of this, Mr. Rogers?

Mr. Rogers: The materiality: I would like to establish whether or not this woman is in fact the clerk of the Local Draft Board.

The Court: She has testified she has been clerk of the Local Draft Board since 1950. And some of the documents already in evidence indicate she is the clerk, don't they?

Mr. Rogers: They bear the signature of the witness and they use the word, 'clerk', your Honor. And I respectfully submit she may or may not be the clerk.

(58) The Court: Frankly, I don't see the materiality of this line of inquiry.

Mr. Rogers: My point, your Honor, being she may or may not have authority to sign certain documents under the Selective Service Act.

The Court: Absent any showing of any evidence she is or is not, I am not going to restrict the inquiry on that score. This lady has served as clerk

of that Board since 1950. I think we had better be realistic here.

Mr. Rogers: Might we have the question?

(Last question read by reporter as follows:

'Did you receive any certificate of appointment or anything?')

A. I believe I have an appointment, a certificate of appointment. I am sure Colonel Wilson can identify me.

Q. So then your answer is you do have some type of certificate?

A. Yes, I do.

Q. To the best of your knowledge, are you appointed for a term or not?

A. No.

Q. You are not appointed for a term. I see.

Now who are the members of the Draft Board No. 4 in Westerly, do you know?

Mr. Gearon: Your Honor, I am going to object to (59) this. I don't see the materiality or relevancy.

The Court: I don't either. What is the materiality of who are the members of Local Draft Board No. 4?

Mr. Rogers: May it please the Court, it might be the members of the Local Board gave to the clerk of this Board authority to send induction notices, et cetera, out.

Mr. Gearon: Your Honor, the record is not subject to collateral attack.

The Court: No, I think not. I will sustain the objection to any inquiry along this line.

Q. Do you customarily sign induction notices?
A. I do.

Mr. Gearon: Objection again, your Honor. I am going to object again, your Honor. The only way the record can be attacked is by an appeal to the Draft Board of Appeals. The record cannot be attacked collaterally in this examination.

Mr. Rogers: If it please the Court, I am not collaterally attacking anything other than the induction notice itself. And it is not a collateral attack, your Honor; it is a frontal attack. And I respectfully urge upon the Court that the question is certainly germane to whether or not this defendant, who is charged with failing to obey an induction notice, is in fact required to obey an induction (60) notice that may or may not be valid.

Mr. Gearon: Again, your Honor, the validity can only be attacked by appeal.

The Court: I know of no requirement of the Draft Board that each and every member of the Draft Board should sign a notice to the registrant. If it is signed by the Clerk. I think that is sufficient.

Mr. Rogers: May it please the Court, my point is not that it must be signed by anybody—the membership of the Board. My point is quite different, your Honor.

The Court: What is your point?

Mr. Rogers: If I might have the question read back, your Honor.

(Last question and answer read by reporter as follows:

'Q. Do you customarily sign induction notices?
'A. I do.')

Mr. Rogers: My point being, your Honor, that perhaps this witness does not have authority to sign an induction notice. Therefore, an induction notice signed by her would in fact be invalid, your Honor.

The Court: That may be your point, but I don't (61) think it is well taken. The record of the Board indicates notice was sent. The witness has so testified. It is not open to collateral attack. I will sustain the objection."

Your petitioner submits that the Trial Justice ruled incorrectly, and unnecessarily limited the petitioner from inquiry into this area. Your petitioner further submits that the authority to sign the induction notice itself was germane, and that the Trial Justice failed to recognize the validity of the contention of petitioner, and severely limited counsel for petitioner in this area.

With reference to the chronological order of events in the instant case, time is rather important. Your petitioner was registered with the Selective Service System on April 18, 1963 and gave an address of 10 Fortin Road, Kingston, Rhode Island. The record will indicate that on May 17, 1963 a communication was sent to the Draft Board and was received by said Draft Board on May 20, 1963 indicating a change of address for the summer at 10 Gorgas Lane, Oakridge, Tennessee. This data may be found at Trial Transcript page 37. The record will indicate also at Trial Transcript page 48 that on January 17, 1966 your petitioner directed a communication to his Draft Board, indicating that he would in fact be leaving town, and that he would in fact keep them advised of his address. Your petitioner's

counsel submits that while the communication directed to the Local Draft Board under date of January 18, 1966 may well be a very poorly drafted letter, and may even contain objectionable language, it is in fact indicative of the existence on the part of the Draft Board of a communication indicating a change of address prior to the issuance of an induction notice. The letter was in fact introduced into evidence and so remained in evidence. This letter in and of itself clearly indicates existence of notice on the part of the Selective Service System of a change of address prior to sending notification to petitioner to report for induction. The same is contained on Trial Transcript page 47.

> "(Letter date stamped January 18, 1966, signed 'Phil Stiles' and accompanying envelope addressed to Rhode Island Local Board No. 4, Westerly, R.I., (47) marked United States Exhibit No. 6)
>
> Q. Would you read this, please, Mrs. Taylor?
>
> "Phil Stiles
> 10 Fortin Road
> Kingston, R.I.
>
> "Dear Sirs,
>
> "Your threatening letters continually arrive, telling me exactly what to do and informing me of the penalties for not complying with your directives.
>
> "In response, I can only repeat my previous assertions that I am unwilling to be a part of the organized murder and threat of murder which is the basis of any army.
>
> "There are better forms of communication than impersonal printed forms filled with orders and threats. If man is to function socially as something more than a

self-destrictive machine, the improvement of communication is of great importance. If you wish to discuss these matters further perhaps we could arrange a mutually convenient time and place.

I hope that you folks can rise above crude attempts (48) at manipulation and engage in some constructive interaction.

"love,

"Phil Stiles.

"PS I am going soon to take a vacation trip of a month or two. I tell you this because my leaving town with no definite forwarding address might otherwise seem evasive. Don't worry, I'll send you post cards letting you know how I'm getting along."

The record will indicate that draft notice was sent to your petitioner on January 24, 1966. The Trial Transcript page 76, says:

"Q. The date of the Selective Service questionnaire went on file as what, Madam?

A. May 8, 1963.

Q. And the date of your induction notice is January 24, 1966. Correct?

A. Yes.

Q. At any time between the date of putting the questionnaire on file and issuing the induction notice, did you have any knowledge of any address other than 10 Fortin Road, Kingston, Rhode Island?

A. Yes, we did.

Mr. Rogers: Excuse me, your Honor.

• • • • •

(82) Q. And you have testified that you received information relative to the whereabouts of Philip J. Stiles from time to time. Is that right?

A. That is right.

Q. But no entries of those are made in this record. Is that right?

A. That is correct."

Your petitioner further submits that other attempts were made to keep the Draft Board advised of his whereabouts. Your petitioner respectfully submits the Trial Transcript will clearly indicate that he was not at any time aware of an induction notice being sent to him in such time as for him to be able to in fact comply with it. The letter previously referred to in this brief, more specifically, the letter under date of January 18, 1966 indicates that he will in fact keep his Draft Board advised. The language also indicates in the letter that he is aware that leaving town without a definite forwarding address might seem evasive. This letter it is respectfully submitted, should in fact be read in conjunction with communications directed to the Draft Board subsequent thereto. More specifically, post card postmarked Knoxville, Tennessee, February 11, 1966, to the Selective Service System, Local Board No. 4, Westerly, Rhode Island, and signed Phil Stiles, which is United States Exhibit No. 7. This communication is found in Trial Transcript at page 50 and clearly indicates an intent to comply with the self-imposed restriction of keeping his Draft Board advised. Additionally, the attention of this Honorable Court is directed to communication under date of February 16th, 1966, in the form of a post card, sent from Mexico to the Draft Board at Westerly, Rhode Island, indicating not only a change of

address, but requesting that a new draft card be sent to petitioner to facilitate his return to the United States. Your petitioner fully realizes that these communications are in fact dated subsequent to the induction notice. But your petitioner further and respectfully submits and urges upon this Court that the Trial Transcript clearly indicates in every manner possible that the petitioner was not in fact aware of the existence of any order, until he returned home to Kingston, Rhode Island, well after the date set for induction in the induction notice itself. The prosecution of this case made much of Federal Regulations, more specifically, Section 1641.3 of the Code of Federal Regulations. The prosecution indicates that and, probably correctly so, that it is the duty of a registrant to keep his draft board advised as to his address. Your petitioner has no quarrel with this regulation, nor with the prosecution citing this regulation. However, your petitioner respectfully urges upon this Court the fact that he has in fact complied. In addition, your petitioner respectfully submits that his conduct has clearly manifested in the Trial Transcript is indicative of the fact of an intent and an attempt to in fact comply. In *Bartchy* v. *United States,* 319 U.S. 484, which was a matter addressed to the Fifth Circuit Court of Appeals, this subject was in fact discussed. The case it would appear, stands for the proposition that it is in fact the duty of a registrant to fully advise his draft board of his address and the location where mail will in fact reach him. This case does, however, it is respectfully submitted, not in and of itself require a registrant who is in fact expecting an induction notice, to remain in any one place, or to notify the draft board of his every move or of every temporary address. The case, it is respectfully submitted,

seems to stand for the proposition that the requirement of the rule to keep the draft board advised of location is in fact satisfied if in fact the registrant in good faith provides a chain of forwarding addresses by which mail sent to the address which is furnished to the draft board may be by the registrant reasonably expected to come into his hands in time for compliance. In the instant case, it is respectfully submitted, the petitioner has in fact met all of the requirements of the *Bartchy* case. In the instant case, he has communicated on numerous times, and had a prior history with the draft board of notifying them of change of address when no induction notice was in fact anticipated. In addition, the case of *United States* v. *Hoffman,* 137 F.2d 416 also seems to stand for the proposition that there must be more than a mere failure in situations such as these, that a very essential element is knowledge, which is the usual criminal intent. In the area of notice, it is respectfully urged upon this Court that the case of *United States* v. *Thompson,* 253 F. Supp., 535, is also of interest. In that case, the defendant was in fact found guilty of violation. However, it is respectfully submitted that the violation in that case was a knowing violation after notice. The case of *United States* v. *Norris,* 341 F.2d 527, also addresses itself to the area of knowledge. The area of notice, with reference to receipt of induction notices has in fact been discussed by the Courts and the subject matter has in fact been entertained, and the rule has been made very clear. In the American theory of jurisprudence, a person ought not be convicted of an offense that was or could be committed without knowledge on the part of the person charged with violation of the law. In the case of *United States* v. *Norris,* 341 F.2d 527, the area of knowl-

edge was in fact faced. In that case, it appeared that a finding of guilty was in fact warranted, because the Court felt that the defendant knew of the existence of an order and had in fact deliberately failed to obey. It is quite reasonable to rationalize that the case seems to stand for the proposition that no person should be convicted because of a mistake, inadvertence, or other innocent reasons, but rather should be convicted only on a finding of culpable intent or an intent to evade the law. It is respectfully urged upon this Court that petitioner falls clearly into this category. The Trial Transcript indicates that the induction notice that the petitioner is charged with failing to comply with was sent to an address that the Draft Board knew, or reasonably should have known, was not an accurate address. In addition, it was in fact received by a person other than petitioner, and it was in fact received at an address other than the address to which the notice was in fact mailed. Not only was it received by a person other than the registrant prior to the date set for the date of induction, the return receipt which is in fact in evidence was in fact returned properly to the Draft Board so that clearly knowledge did in fact exist on the part of the Draft Board that the registrant, who is herein your petitioner, did not in fact receive notice of induction. It is respectfully submitted that the Draft Board knew, or reasonably shown have known, that there was an irregularity with reference to this particular induction notice. Your petitioner is not attempting to place an additional burden upon the Draft Board, but your petitioner is respectfully urging upon this Court that the Draft Board certainly was aware of an irregularity, and that the irregularity was not caused in any manner or form by your petitioner. It is also re-

spectfully urged upon this Honorable Court that your petitioner ought not be convicted of this offense which is in fact a crime, when the entire situation could have and should have been obviated upon receipt of the registered mail certificate, bearing signature of a person other than the registrant. The fact that registrant herein your petitioner, was not aware of the existence of this order until his return to the United States subsequent to the date set by the Draft Board for induction is found in numerous places throughout the Trial Transcript from testimony of many witnesses. All of this testimony stands uncontradicted, and it is graphically obvious that there was absolutely no knowledge on the part of your petitioner of the existence of this order. It is therefore respectfully urged upon this Court that the petitioner herein has in fact been convicted, and in fact sentenced to serve a term of years in prison for an offense that did in fact take place totally and absolutely without the knowledge of the defendant, herein your petitioner. The spirit and theory of American law is predicated upon equality, justice and freedom. It is respectfully urged upon this Court, the highest tribunal of the free world, that the conviction ought not be sustained, and should in fact be reversed because there is a glaring absence of knowledge on the part of your petitioner. Further, your petitioner respectfully urges upon this Honorable Court that to allow a conviction and a jail term to be imposed for a violation of the law by a method that does not require knowledge and notice of the violation on the part of the defendant, is contrary to the prevailing theory of jurisprudence in the United States of America. Another case of significance is the case of *United States* v. *Dailey*, 139 F.2d 7. The Court in hearing and deciding that matter

took a position of significance to this case. On page 8 of the so-called *Dailey* case, the Court seems to take the position that the issue before the Court was if or not the Draft Board issued an order, and if or not the defendant got the notice. The Court seems to say that this is in fact the real issue. It would appear, then, that the question of notice includes two parts. Number one was the notice sent at all. And number two, was the notice in fact received by the person charged with violation of the law. It is graphically obvious in this case that there was no receipt of the notice timely enough by the petitioner to in fact avoid criminal violation. Parts of the Trial Transcript of extreme significance to your petitioner are contained on page 282 and following,

"GRACE ELLEN STILES, Sworn.

Direct examination by Mr. Rogers:

Q. Mrs. Stiles, you know the defendant in this case.

A. Yes, sir.

Q. Is there any relationship between you and the defendant?

A. He is my son, sir.

Q. He is your son. Mrs. Stiles, where do you live?

A. At 10 Fortin Road, Kingston.

Q. That is in Rhode Island?

A. That is in Rhode Island, yes.

Q. Were you living there, at 10 Fortin Road, Kingston, Rhode Island, on January 25, 1966?

A. Yes.

Q. Did you ever receive any communication from anywhere for your son at that address.

A. Yes.

Q. More specifically, did you ever receive any registered mail at that address, addressed to your son, Phillip Stiles?

A. Yes.

Q. I ask you—

A. (Continuing) We maintain a post office box.

The Court: A little louder, please.

The Witness: We maintain a post office box for convenience, but it is the same address.

(283) The Court: It is the same address.

Q. Referring you to United States Exhibit No. 2, Mrs. Stiles, with a receipt appended, do you recognize this signature on the second line?

A. Yes, sir; that is my signature.

Q. Would you read it, please?

A. It says: 'Grace Ellen Stiles, 10 Fortin Road, Kingston, Rhode Island.'

Q. Would you read the date delivered, Mrs. Stiles?

A. '1/25/66.'

Q. Did you in fact sign this receipt?

A. Yes, sir.

Q. Have you ever seen Government's Exhibit No. 2 before?

A. This paper?

Q. Yes.

A. I don't believe so, sir, because I did not open the thing that I signed for.

The Court: Can't hear you, Madam.

The Witness: I don't believe that I have ever seen the paper because I did not open the envelope that I signed for. I received the envelope, signed for its receipt. I did not open it.

Q. Do you recall January 25, 1966?

A. Yes, I do.

(284) Q. At that time was the defendant in this case, your son, Phillip J. Stiles, at 10 Fortin Road in Kingston?

A. That was his residence but he had gone away for a holiday, a visit with some friends.

The Court: He had what?

The Witness: He was not at home. He had gone for a visit with some friends.

The Court: For a visit with some friends?

The Witness: Yes, sir.

Q. And Mrs. Stiles, do you know of your own knowledge where he went?

A. I wasn't with him. He said that he was going to visit some friends in New York City. I cannot give you the address. And he went from there on to visit some friends in other places. And before he did come back he had visited Mexico. But I believe at that time he must have been in New York City, according to what I understood.

Q. Can you recall approximately when he left for this visit?

A. It must have been about the middle of January.

Q. About the middle of January?

A. Yes.

Q. By the middle, do you mean January 15th.

A. Well, the 15th. It was before the 25th.

Q. Can you recall approximately when your son returned to 10 Fortin Road, Kingston?

A. His birthday is March 23rd, and it was shortly before that. I would say between the 5th and 20th of March sometime.

Q. Was your son at 10 Fortin Road at any time between, say, January 15, 1966 and February 9, 1966? Your answer?

A. No.

Q. You say that he returned home after February 9, 1966.

A. Yes.

Q. And again when do you think he returned?

A. It was in March.

Mr. Gearon: Object to the form of the question; when do you think he returned.

The Court: It is repetition. She has already said her best recollection was between the 5th and 20th of March.

Q. Was it closer to the 20th, Mrs. Stiles, of March?

A. My best guess would be about the 15th of March.

Q. About the 15th of March. And at that time what did you do with mail that you had collected for him?

A. I had collected it in a drawer in his room, and I gave it to him; told him where it was and gave it to him."

It is respectfully submitted that this position of no notification was in fact supported and buttressed by government witnesses. Another interesting case in this area of knowledge and notice is the case of *United States* v. *Mitchell,* 246 F. Supp. 874. It would appear that this case stands for the proposition that the issues are whether or not a valid order was issued by the Draft Board and whether or not the defendant was in fact given notice of the order and was a failure to report pursuant to this notice a willful and knowing violation. It appears then that

the question of whether or not a person received the notice is in fact most important. Your petitioner respectfully submits to this Honorable Court that it is clearly conceivable that a person can in fact attempt to avoid an obligation, and to very frankly hide behind the requirement of notice. This device or artifice could be resorted to by any person, and during the trial of this case, it is very obvious that petitioner's conduct prior to the date of indictment is such as to rule out this possibility. It is respectfully submitted to this Honorable Court that all of the conduct and all of the facts surrounding the conduct and the violation should be taken into consideration by this Honorable Court. Your petitioner respectfully prays that this Court will see clearly that he has not wilfully and knowingly attempted to evade anything. Quite to the contrary, while the communications may not have been in the best form, or content, their purpose when applied to the law of the United States, was in fact achieved. The case law of this country indicates that a person should not be penalized for mistake or inadvertence. It is respectfully submitted that mistake and inadvertence does exist in this situation and that very frankly and very honestly the mistake was made by the Draft Board. In the final analysis, they had the ability to prevent the mistake from taking place, in the first instance. In addition, it is respectfully urged upon this Honorable Court that your petitioner has in fact been sentenced to serve a term of years in a prison for this mistake. Another interesting case in this area which was decided during the year 1965, is the case of *United States* v. *Price,* 240 F. Supp. 390. In the so-called *Price* case, the defendant failed to report on time and was in fact properly convicted. But again, it is submitted that the Court drew its attention to the fact that there must be ample notice of the

fact that defendant did in fact know of the order. The case of *United States* v. *Haug*, 150 F.2d 911, is also important. In that case the defendant was also convicted for failure to keep the Draft Board advised of his address where mail could reach him. It is interesting to note, however, that the Court, on page 913, seemed to say that even though a certain section of the act made it a crime to neglect to perform a duty required by the regulations, when the accused failed to do so knowingly, and it would not have been a crime for the defendant to fail to fill out and return a questionnaire even if it had been properly addressed if it never reached him. This case seems to stand as further testimony that actual receipt is in fact required. In the appellant's case, he could not have reasonably been expected to report for induction if he did not in fact receive the notice.

Your petitioner put into issue sanity by filing a plea of not guilty by reason of insanity in addition to a previously filed plea of not guilty. Your petitioner submits that insanity and suitability for service were in fact in issue before the Trial Court. Your petitioner further submits that the record of this case will indicate that your petitioner filed with the Trial Court a motion for examination as to suitability of service on October 31, 1966. His suitability for induction into the Armed Forces was extremely important, and a rather unusual motion was in fact filed in his behalf in this area. The motion is part of the record of this case, and that the motion contains a request for examination and that the case be removed from the jury trial calendar until the examination had in fact been completed. This motion was argued in the United States District Court for the District of Rhode Island, and the motion was denied and dismissed by the Trial Justice pur-

suant to an order of December 1st, 1966. The hearing on said motion was held on November 21st, 1966. The Trial Transcript indicates clearly that the Trial Justice was in fact aware that an examination was in fact conducted by medical officers of the United States Navy, and it is respectfully submitted, that this examination was not made pursuant to the motion made on behalf of the petitioner, but was a voluntary examination at the urging of counsel for petitioner, outside the motion. It is respectfully requested that this Honorable Court take cognizance of the fact that suitability for service was in fact in issue from the very outset of this case. The Trial Transcript will indicate that the Trial Justice had knowledge on the record that your petitioner was unfit for military service.

"First Day

Tuesday, January 17, 1967

2:00 P.M.

Mr. Rogers: If it please the Court,—

The Court: Do you wish this to be given to the reporter?

Mr. Gearon: Yes, your Honor, I would like to have it taken down.

The Court: Suppose you come up to the bench then.

(Bench conference as follows:)

Mr. Rogers: If it please the Court, after pretrial conference, after reporting to the courthouse and being advised—

The Court: Please speak out of the hearing of the spectators.

Mr. Rogers: After being advised to report here for trial at 2 o'clock here this afternoon, myself and John Notte, Esq. had a conference with the United States District Attorney for this District, Mr. Frederick Faerber, Esq., who advised me—and I represent to this Court—in the event that my client, who stands indicted for failure to report for induction were in fact to submit to induction into the military forces of this country, and were (3) found by the Selective Service Authority to in fact be unacceptable, that the United States Attorney's office would in fact move in open court to dismiss the indictment against the defendant.

I make those representations to this Court as my best recollection of the conference with Mr. Faerber, and I ask Mr. Notte to state for the record whether or not this is a fair and accurate representation of the conversation we had.

Mr. Notte: This is a fair and accurate representation, your Honor.

Mr. Gearon: Your Honor, the position of the United States Attorney is essentially what Mr. Rogers said. However, it is felt, for the purposes of this record, that the reason for so doing is that the Selective Service takes the position that if a person would report for induction, it is better to have them so report than to be incarcerated in jail in the event of a conviction upon this type of case.

However, because of this case and the situations and the examinations made by psychiatrists, I feel it should be placed in the record one of the conisderations for the Government taking this position is that although

the man (4) is charged with failure to report for induction—which does not necessarily mean he will become a member of the Armed Forces—it is directing him, as a citizen of the United States within military age, to submit to an induction and physical examination to determine his eligibility for the Armed Forces. That is what this indictment charges him with: failure to report for induction.

The Court: I thought it charged him with failure to report for examination.

Mr. Gearon: No, failure to report for induction, submit to the induction in the Armed Forces. But because of the uniqueness of this situation and in view of the fact that there has been psychiatric examination of this defendant, and a psychiatric examination by three doctors at the Naval Base in Newport on Friday, January 13, 1967 wherein the conclusion at the end of the examination, signed by the three physicians, psychiatrists,—their comment is as follows:

> 'From the above history and findings it is the opinion of this board of psychiatric examiners that this person was at the time of any alleged offenses so free from mental defect, disease or derangement as (5) to be able concerning any particular acts charged to adhere to the right. He possesses sufficient mental capacity to understand the nature of any proceedings against him and intelligently to conduct or cooperate in his own defense. It is also the opinion of this board that this person is unfit for military service.'

And it is signed by E. A. Vadeika, Frank M. Moscarillo, A. H. Schwartz.

I have a further examination conducted by Max Faintych.

The Court: Would you gentlemen be good enough to make clear to me what this is all about?

Mr. Gearon: This is the position: that if this man submits to induction, in all probability he will not be acceptable anyway. But in view of the fact that he is willing to go down for induction, the Government would take the position—and the United States Attorney has recommended—that there would be no further prosecution because it would really in effect —if he were a person who could be eligible for the Armed Forces, there would (6) be a point in going forward with it. But insofar as this person, while charged with failure to report for induction, which is a serious crime,—

The Court: Are you ready to go to trial or aren't you?

Mr. Gearon: We would continue it if this man—

The Court: I see no need of it. Let's try this case and get it behind us. That is my position. Either he is guilty or he isn't.

(Bench conference concluded.)

(Jury impaneled.)"

It is respectfully urged upon this Honorable Court that the Trial Judge had special and peculiar information at his disposal, and that he failed to exercise the proper discretion. The United States Attorney clearly indicated that this person was in fact unfit for military service, and read into the record the findings of the physicians. In addition, the United States Attorney clearly indicated on the

record that in view of the fact that your petitioner was willing to go down for induction that he would recommend there be no further prosecution. Whereupon, the Trial Judge indicated that the case must proceed to trial. Your petitioner submits that the Trial Judge had control of the situation at that time and failed to exercise the proper discretion. The peculiar and special knowledge of the Trial Judge is also a very important matter in the area of examination of medical witnesses on the part of petitioner's counsel. Having this special and peculiar knowledge, the Trial Judge severely limited petitioner's counsel from examination of physicians in an area dealing with suitability, when the Trial Judge in fact knew that the petitioner was unfit for military service and had been declared so by officers of the United States Navy. Your petitioner respectfully submits that the statutory law of the United States, pursuant to 50 U.S.C., App., §454, clearly indicates that no person can in fact be indicted into the armed forces for training and service until his acceptability in all respects including his physical and mental fitness has been satisfactorily determined under standards prescribed by the Secretary of Defense. The Trial Justice had peculiar knowledge of the facts surrounding this case and peculiar knowledge as to suitability of this petitioner for service in the Armed Forces of the United States and this denial of the motion for physical evaluation and severe limitation of examination and discussion in this area operated to the prejudice of petitioner. It is again respectfully urged upon this Court that your petitioner stands not only convicted of a crime but sentenced to two (2) years in a federal penitentiary, and yet he is the same petitioner of whom it was clearly obvious from the outset that he was unfit for mili-

tary service after submitting voluntarily to an examination by physicians of the United States Navy, and all of this information was available to the Trial Judge, and all of it is contained in the record of this case.

The defense of not guilty by reason of insanity was raised by the defense at the trial level in addition to the plea of not guilty which was entered at the arraignment of petitioner. Your petitioner humbly prays this Court to exercise its supervisory powers over all of the Courts in the United States to clarify an area of great concern to every single person in the United States, particularly petitioner. Nowhere in the world is the enunciation of the doctrine of separation of powers and supremacy of the judiciary practiced but in the United States of America. Our history indicates, properly so, that there must in fact be a judicial determination of questions, and when the judicial determination is made, that is in fact final. Our constitution provides for but one court, that is the United States Supreme Court, to which this petition is in fact addressed. Our constitution says also that there shall also be such inferior courts as the Congress shall, from time to time, create. Clearly, the supremacy of the United States Supreme Court exists in the statutory law of this country, in the constitution of this country, and in the case law of this country, where it was clearly established in *Marbury* v. *Madison.* There is no country in the world in which a humble citizen can in fact appeal and know with full certainty, in fact full, absolute and total certainty, that if said Court rules that the ruling of said Court will in fact be the law of the land. There is in existence in the United States of America great controversy as to precisely what rule will in fact be the rule with relation to a determina-

tion of sanity or insanity. The writers, the reporters, the practitioners, discover rapidly that there are many, many rules, many criteria and many standards for a determination of the very simple concept of criminal responsibility and insanity. There is no doubt in the mind of petitioner or of petitioner's counsel that clearly power exists in the United States Supreme Court in a final enunciation and definition of what the rule shall in fact be in these United States with reference to this particular subject. It is respectfully urged upon this Court that this is in fact a proper case and that a tremendous need exists in the United States for enunciation of doctrine, as to precisely what rule we shall follow. Petitioner urges upon the United States Supreme Court that, pursuant to the authority vested in them and the responsibility for the care, comfort, protection and well-being of the citizens of the United States, enunciate clearly for once and for all what criterion will be followed in this country in this particular area. Petitioner cites the case of *United States of America, Appellee* v. *Charles Freeman, Appellant,* No. 182, Docket No. 29688 argued before the United States Court of Appeals for the Second Circuit on December 15, 1965, and decided by that Honorable Court on February 28, 1966, and cited as 357 F.2d 606 before Waterman, Kaufman and Hays, Circuit Judges, excerpts of which your petitioner respectfully will quote verbatim for this Honorable Court. Beginning at page 613 of the above cited case, the language reads:

"It need scarcely be observed that the sufficiency of the M'Naughten rules as a test of criminal responsibility would not be open to question to us if the Supreme Court had definitely spoken on the issue. Bound by Supreme Court precedence we would of course be compelled to follow any

decision of that body which adopted M'Naughten as the exclusive criteria in the federal prosecutions, regardless of our dissatisfactions of such a test. As a distinguished attorney and former Secretary of State has recently and perceptively observed in other context, Federal judges are hardly in power to satisfy a mere "desire for change in the law in accordance with the decider's own conception of right. (They) may conscientiously be seeking to administer justice, but it is personal justice. . . . The justice of Louis IX or Harun Al Rashid, not that described on the lintel of the Supreme Court Building, 'Equal Justice Under Law'. Despite the Government's arguments to the contrary, we do not believe that the Supreme Court has placed its stamp of approval on M'Naughten and we find the cases cited for this proposition to be readily and clearly distinguishable. Thus *Davis* v. *United States,* (1), 160 U.S. 469, 16 S.Ct. 353, 4 L. Ed. 499, (1895) and *Davis* v. *United States,* (2), 165 U.S. 373, 17 S.Ct. 360, 41 L. Ed. 750, (1897) do not represent a square holding after the sufficiency of M'Naughten. The former was concerned with the issue of burden of proof. . . . rather than the applicable standards. . . . While the matter primarily involved the claim that the trial court charge was so narrow as not even to give the defendant full benefit of M'Naughten." Neither case in short, raised the question whether M'Naughten should be replaced or supplemented by alternate cases. In addition, on page 614 of the above cited case, the Court said,

"Our conclusion is that the Supreme Court has not definitively spoken on the issue is in accord with that of a substantial number of courts of appeal which have considered the question. However, the Circuit Court of Appeals for

the Ninth Circuit found only that the Supreme Court or Congress could modify M'Naughten, *Sauler* v. *United States,* 241 F.2d 640 (Ninth Circuit), certiorari denied 354 U.S. 940, 77 S.Ct. 1405, the District of Columbia, the Third and Tenth Circuits adopted a contrary position. After an exhaustive analysis of the decisions in this area, Chief Judge Biggs, who has for many years advocated change and has offered exceptionally scholarly works on the subject, including his trail blazing dissent in *United States ex rel. Smith* v. *Baldy,* 192 F.2d 540 (Third Circuit), 1951, concludes that the Third Circuit need not feel 'constrained to adhere to and uphold the M'Naughten rules.' The *United States* v. *Currens,* 290 F.2d 751, 771 (1961), Chief Judge Murrah, who has been an appellate Judge for over a quarter of a century and who has been in the forefront of judicial and administrative reforms, speaking for the Tenth Circuit, observed that since criminal responsibility was a rule of decision in the Federal Courts based upon common law concepts, it was always appropriate to "re-examine and re-appraise it". *Wyon* v. *United States,* 325 F.2d 420, 425 (1963) certiorari denied, 377 U.S. 946, 84 S.Ct. 1354, 12 L. Ed. 1309 (1964). It seems also significant that in the face of a proliferation of cases in the area of criminal responsibility, the Supreme Court has consistently refrained from granting certiorari to consider this issue, despite inconsistent results among state courts and Federal circuits. At least one writer has suggested that the Supreme Court's inaction in this area is not mere coincidence, but is motivated by a desire to encourage the circuits to discuss and develop alternative tests before making a definitive ruling. After a considerable reflection on the issue presented, we therefore conclude that we can-

not escape our duty to consider whether the M'Naughten rule of M'Naughten's rules augmented by the "irresistible impulse" test should continue to remain the test of criminal responsibility in this Federal jurisdiction."

It is respectfully submitted, therefore, that this Honorable Court has ample authority to consider the application of other tests and is not in fact bound by any single rule, and that in fact the United States Supreme Court and only the United States Supreme Court can in fact lay down what rule shall in fact be followed. The mental capacity of the petitioner in the instant case, became, was and is important in this case. It has been alleged and substantiated by a qualified psychiatrist who treated the petitioner, a qualified psychologist who examined the petitioner and verified by physicians of the United States Navy that in fact an emotional disturbance did in fact exist. It is respectfully urged upon this Court that petitioner understands full well and in fact agrees with the proposition that sanity or insanity is a question of fact for the jury. The jury in this case rejected the defense of insanity by finding the defendant guilty as charged. It is respectfully urged upon this Court that petitioner's request for instructions made upon the Trial Judge were in fact granted in that the test applied and the charge given, which is in fact the law of this case, was a test other than the M'Naughten rule. It is urged upon this Honorable Court that it is completely the feeling of the petitioner and counsel for the petitioner that the Federal District Judge for the District of Rhode Island is eminently qualified to hold his office, and is in fact eminently fair to all persons appearing before said Court. Additionally, it is urged upon this Court that the request for charge as filed by petitioner was in fact granted by the

Trial Judge. And the said charge is on file with the papers in this case. It was requested in the motion for charge that the so-called American Law Institute law rule be followed and the M'Naughten test in fact be abandoned. The test applied was, "A person is not responsible for criminal conduct, if at the time of said conduct as a result of mental disease or defect he lacks the substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." It is respectfully suggested to this Honorable Court that the Trial Justice in his wisdom granted the request for instructions and so instructed the Jury. It is respectfully urged upon this Honorable Court that such was in fact a proper charge and that such is in fact a proper law to be applied in the area of criminal responsibility with reference to insanity. It is respectfully urged upon this Court that the Jury while enjoying full latitude in discussion of questions of fact did not in fact arrive at a proper decision. The prosecution and defense medical witnesses clearly established on the record that your petitioner suffered from mental disorder of a chronic nature. Petitioner respectfully urges upon this Honorable Court that the Jury did not in fact understand the charge, and that the facts when applied to the law of this case namely the American Law Institute rule would not permit a finding of guilty. If petitioner had established only by petitioner's physicians that a defect existed, it would be one position, but here the evidence was uncontradicted on all sides that a mental defect of a chronic nature existed under the American Law Institute rule. Accordingly, it is respectfully urged upon this Honorable Court that pursuant to the supervisory authority vested in this Court and only in this Court that the American Law Institute rule be adopted throughout the United States.

Conclusions

It is respectfully urged upon this Court that for the reasons herein cited, that the conviction of your petitioner should in fact be reversed, and that the term of years in a federal penitentiary be eliminated as a necessary consequence thereof.

Respectfully submitted,

PHILIP JEROME STILES,
By his attorney,
CHARLES J. ROGERS, JR.

Certification

I, Charles J. Rogers, Jr., Esquire, of Providence, Rhode Island, make affidavit and say that I have in fact this 4th day of September, A.D. 1968 furnished a copy of the within brief in typewritten form to Erwin Griswold, Esquire, Solicitor General of the United States of America.

Respectfully,

CHARLES J. ROGERS, JR.